

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CESAR HIDALGO,)
Plaintiff,)
vs.)
SYSCO ATLANTA, LLC; ABC) CIVIL ACTION
CORPS 1-3; and, JOHN DOES 1-3) FILE NO.: _____
Defendants.) DEMAND FOR JURY TRIAL
)

DEFENDANT'S NOTICE OF REMOVAL

Defendant Sysco Atlanta, LLC (“Defendant”), files this Notice of Removal showing the Court as follows:

1.

Plaintiff Cesar Hidalgo (“Plaintiff”) filed a civil action in the State Court of Gwinnett County, Georgia, with Civil Action File No. 22-C-07369-S5, asserting premises liability claims arising out of an incident that took place on or about January 23, 2020 at a facility located at 2225 Riverdale Road, College Park, Georgia 30349. The entire state court file is attached hereto as Exhibit “A”.

2.

At the time the Complaint was filed, Plaintiff was a citizen of the State of

Georgia.

3.

“For the purpose of determining diversity jurisdiction, ‘a limited liability company is a citizen of any state of which a member of the company is a citizen.’” Flintlock Const. Servs., LLC v. Well-Come Holdings, LLC, 710 F.3d 1221, 1224 (11th Cir. 2013) (quoting Rolling Greens MHP, L.P. v. Comcast SCH Holdings L.L.C., 374 F.3d 1020, 1022 (11th Cir.2004)).

4.

At the time the Complaint was filed, Defendant was a foreign limited liability company formed under the laws of the State of Delaware with its principal place of business located in Georgia.

5.

At the time the Complaint was filed, Defendant’s sole member was Sysco USA III, LLC, a foreign limited liability company formed under the laws of the State of Delaware with its principal place of business in Texas.

6.

In turn, Sysco USA III, LLC has two members— FreshPoint, Inc. (1% ownership) and Sysco Holdings, LLC (99% ownership).

7.

FreshPoint, Inc. is a foreign for-profit corporation incorporated under the laws of the State of Delaware with its principal place of business in Texas.

8.

Sysco Holdings, LLC is a foreign holding limited liability company formed under the laws of the State of Delaware with its principal place of business in Texas. Sysco Holdings, LLC is wholly owned by Sysco Corporation.

9.

Sysco Corporation is a foreign for-profit corporation incorporated under the laws of the State of Delaware with its principal place of business in Texas.

10.

Consequently, based on the citizenship of its member (and that entity's respective members), Defendant is a citizen of Delaware and Texas for diversity jurisdiction purposes. See Flintlock, 710 F.3d at 1224.

11.

In the Complaint, Plaintiff alleges that due to the subject incident he has suffered "significant injuries." (Compl. ¶ 12, 18, 26). Plaintiff alleges that he has suffered "bodily injury resulting in pain and suffering, disability, disfigurement, permanent and significant scarring, mental anguish, loss of the capacity for the

enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money, and aggravation of previously existing condition. (*Id.* at ¶¶ 20, 27). Plaintiff claims that his alleged “losses are either permanent or continuing and Plaintiff will suffer the losses in the future.” (*Id.* at ¶¶ 20, 27).

12.

Further, Plaintiff alleges that as of the date of the complaint he has incurred medical expenses in excess of \$44,000.00. (*Id.* at ¶ 19).¹

13.

Plaintiff is also seeking to recover an unknown amount of general damages, including pain and suffering, mental anguish, and loss of the capacity for enjoyment of life. *Id.* at ¶¶ 20, 27. The amount of lost wages and future lost earnings Plaintiff seeks to recover is also an unknown. *See id.*

14.

Based on Plaintiff’s allegations in the Complaint, Plaintiff’s alleged injuries and damages in the subject incident, and the allegations that Plaintiff’s injuries are

¹ Although Plaintiff’s complaint generally alleges “medical expenses in excess of \$44,000.00,” Defendant is in possession of medical records bills in excess of \$205,000.00 that Plaintiff claims stems from the subject incident.

permanent and that treatment and expenses are ongoing and will continue in the future, the total of the alleged special and general damages at issue in this matter exceeds the amount in controversy requirement for removal to this Court, and the jurisdictional prerequisite is therefore satisfied. There is diversity of the parties at the time of this removal, which satisfies the remaining requisite elements of jurisdiction and entitles Defendant to remove this action to the United States District Court for the Northern District of Georgia, Atlanta Division, pursuant to 28 U.S.C §§ 1332 and 1446.

15.

The foregoing action is properly removable to this Court pursuant to 28 U.S.C. § 1441(a), 28 U.S.C §§ 1446(a) and (b) and, in accordance with U.S.C. § 1332(a), there being a complete diversity of citizenship between Plaintiff and Defendant, and the amount in controversy, exclusive of interest and costs, exceeds the sum of \$75,000.

16.

Now, within thirty days after the receipt by Defendant of the document indicating that the amount in controversy has been met and thus making the case removable to this Court, notice is hereby given, in accordance with 28 U.S.C. § 1446 and pursuant to Rule 11 of the Federal Rules of Civil Procedure, of the removal of

said action to this Court.

17.

Written notice of the filing of this Notice of Removal will be given to all parties as required by 28 U.S.C § 1446.

18.

Defendant consents to the removal of this matter to the United States Court for the Northern District of Georgia, Atlanta Division.

19.

A true and correct copy of this Notice of Removal will be filed with the Clerk of the State Court of Gwinnett County, Georgia, as required by 28 U.S.C § 1446.

WHEREFORE, Defendant prays that the above-captioned lawsuit be removed to the United States Court for the Northern District of Georgia, Atlanta Division.

Respectfully submitted, this 20th day of January, 2023.

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*Attorneys for Defendant Sysco Atlanta,
LLC*

CERTIFICATION PURSUANT TO LOCAL RULE 5.1B

This is to certify that this Pleading was created in Times New Roman 14-point font with a 1.5" top margin in accordance with Local Rule 5.1B.

This 20th day of January, 2023.

BAKER, DONELSON, BEARMAN
CALDWELL & BERKOWITZ, PC

/s/ Brent W. Cole
BRENT W. COLE
Georgia State Bar No. 294999

*Attorneys for Defendant Sysco Atlanta,
LLC*

CERTIFICATE OF SERVICE

This is to certify that I served a copy of the foregoing **NOTICE OF REMOVAL** with the Clerk of Court using the CM/ECF filing system, which will automatically send email notification of such filing to the following attorney of record, as well as by U.S. Mail, to:

Nigel Phiri
Law Office of Nigel Phiri, Esquire, LLC
3379 Peachtree Road NE
Suite 555
Atlanta, Georgia 30326

This 20th day of January, 2023.

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